

court should suspend these proceedings pending the Supreme Court's decision in *Trevino*. See Dkt. No. 55 at 13-14.

The issues raised in the parties' supplemental briefing include some of the most intricate procedural issues and challenging and unsettled matters of federalism impacting death-penalty litigation. If Petitioner's claims of ineffective assistance of counsel are procedurally barred, but the Supreme Court applies the *Martinez* exception to Texas cases, those claims could be entitled to *de novo* review, without the deference otherwise required by the Antiterrorism and Effective Death Penalty Act of 1996 for claims that were adjudicated on the merits in state court, because these claims were never presented to the state courts. This could require an evidentiary development that would not be appropriate in this court under current Fifth Circuit precedent.¹ Recognizing the potential impact on similar claims, other proceedings have already been abated pending the Supreme Court's decision in *Trevino*.² As Respondent's supplemental brief notes, the Supreme Court heard oral argument in *Trevino* more than a month ago. See Dkt. No. 54 at 1. Therefore, a decision in *Trevino* is expected within a short time. Because of the *Trevino* decision's potential impact on these proceedings and the uncertainty of how the Supreme Court will decide the matters now before it,

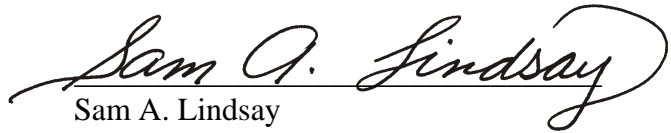
¹ Respondent argues that a better approach would be to alternatively address any procedurally barred claims on their merits. See Dkt. No. 54 at 7. This court would not, however, under current Fifth Circuit precedent, conduct the evidentiary development that may be necessary to adequately resolve *de novo* the merits of any procedurally barred claims.

² See *Rayford v. Thaler*, No. 12-70004, Notice of Cancellation of Oral Argument (5th Cir., Nov. 7, 2012); *Will v. Thaler*, No. 4:07-CV-01000 (S.D. Tex., Dec. 20, 2012); *Reynoso v. Thaler*, No. 4:09-CV-02103 (S.D. Tex., Jan. 2, 2013); *Flores v. Thaler*, No. 3:07-CV-413-M (N.D. Tex., Jan. 15, 2013); *Garcia v. Thaler*, No. 3:06-CV-2185-M (N.D. Tex., Jan. 15, 2013); *Medina v. Thaler*, No. 4:09-cv-03223 (S.D. Tex., Feb. 6, 2013); *Ochoa v. Thaler*, No. 3:09-CV-2277-K (N.D. Tex., Mar. 5, 2013); *Braziel v. Thaler*, No. 3:09-CV-1591-M (N.D. Tex., Mar. 14, 2013).

this court exercises its discretion to wait the short time expected for a final decision by the Supreme Court in *Trevino*.

For the reasons herein stated, further proceedings in this cause are suspended and held in abeyance until the Supreme Court issues its decision in *Trevino*. There appears to be no further reason at this time to maintain this case as an open file for statistical purposes, and the court **determines** that it should be, and is hereby, **administratively closed**. Accordingly, the United States District Clerk is **instructed** to submit JS-6 form to the Administrative Office, thereby removing this case from the statistical records. Nothing in this order shall be considered a final dismissal or disposition, and this case shall be reopened upon the issuance of a final decision by the Supreme Court in *Trevino* or as determined by further order of this court.

It is so ordered this 23rd day of April, 2013.


Sam A. Lindsay
United States District Judge